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Initial reports of States parties due in 2000

Burkina Faso*

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Introduction

1. The fact that Burkina Faso has become a party to several international legal instruments demonstrates its willingness to contribute to the establishment of peace in society and international security and to promote the self-fulfilment, well-being and tranquillity of its citizens.

2. In general, human rights constitute a reality in Burkina Faso. The Constitution guarantees freedom of thought, conscience and religion and freedom of opinion and expression. It also guarantees freedom of association, a multiparty system, freedom of assembly, freedom to demonstrate and the right to participate in the administration of public affairs. At the institutional level, this commitment to human rights has resulted in the establishment of the Ministry for the Promotion of Human Rights, the National Human Rights Commission and the Interministerial Committee on Human Rights and International Humanitarian Law.

3. The general information on Burkina Faso contained in this report (chap. I) and the information on the political structure (chap. I, sect. B) and legal framework (chap. I, sect. C) provide a better understanding of this commitment.

I. General information on Burkina Faso

A. Territory, population, demographics and education

1. Geographical situation and population of Burkina Faso

4. Burkina Faso is a landlocked country in West Africa with a surface area of 274,000 square kilometres. It shares a border with six States, namely Benin, Côte d'Ivoire, Ghana, Mali, the Niger and Togo. The Mouhoun, the Nazinon and the Nakambé are its three major waterways (rivers). Burkina Faso is divided into 45 provinces and 13 administrative regions. There are 49 urban municipalities and 353 rural municipalities in the country.

5. The country's population comprises about sixty ethnic groups and totals some 13 million inhabitants, who are distributed across the major cities as follows:

- Ouagadougou, the capital: 1.2 million people;
- Bobo Dioulasso: 550,000 people;
- Koudougou: 73,000 people;
- Ouahigouya: 60,000 people.

6. More than two dozen languages are spoken in Burkina Faso. Mooré, Dioula and Ffuldé are the languages most commonly spoken throughout the country. The official language is French.

7. According to statistics from the United Nations Children's Fund (UNICEF), in 2005 life expectancy at birth was 48 years and the infant mortality rate was 96 per 1,000 live births (see www.unicef.org/infobycountry/burkinafaso_statistics.html).

2. Education

8. Burkina Faso has made significant progress in the areas of formal and informal education. As the Prime Minister stated in his 2005 state of the nation address (delivered on 30 March 2006), the gross enrolment rate rose from 56.84 per cent in 2004–2005 to 60.24 per cent in 2006, representing an increase of 3.4 percentage

points. The literacy rate among students increased from 31.52 per cent in the 2003/04 school year to 43.06 per cent in 2004/05, which is 3.6 percentage points higher than the target of 40 per cent set for that period. Furthermore, with regard to informal education, the number of Permanent Literacy and Training Centres rose by 17.85 per cent, while the number of literacy trainers increased from 175 to 239.

9. The Prime Minister also stated in his address that the secondary education enrolment rate had progressed from 13.60 per cent in the 2003/04 school year to 13.60 per cent in 2005/06. In 2006, there were general secondary schools in 260 of the 351 departments in the country. The Government has adopted a policy to increase the number of general secondary schools and has set the objective of having one such school in every department. In addition, the Sciences Institute has been established within the University of Ouagadougou to address the shortage of science teachers.

10. In addition to the University of Ouagadougou and the University of Bobo Dioulasso, a third university, the University of Koudougou, was established for the 2005/06 academic year and opened its doors in October 2005. In the 2005/06 academic year, a total of 34,089 students were enrolled in the 35 public and private institutions of higher learning in Burkina Faso. This represents an average annual increase of 22 per cent and amounts to a doubling of the number of students in five years.

B. General political structure

1. Development of democracy in Burkina Faso

11. Burkina Faso, which was known as the Republic of Upper Volta until August 1984, gained its political independence on 5 August 1960. The following events have marked the political history of Burkina Faso:

- The First Republic was founded in 1960 and lasted until 1966;
- The Army seized power on 3 January 1966;
- The Second Republic was founded in 1970, lasting until 1974;
- The Army seized power once again on 8 February 1980;
- The Third Republic was in place from 1978 to 1980;
- On 25 November 1980, the Army took power for the third time since the country's independence;
- The regime established on 25 November 1980 was overthrown on 4 August 1983;
- Another military regime (known as "the Revolution") was installed on 4 August 1984, resulting in a name change for the country. The Republic of Upper Volta thus became Burkina Faso, which means "the homeland of honest men";
- On 15 August 1987, the "revolutionary" regime was replaced by another military regime, known as the "Popular Front";
- A new era began with the birth of the Fourth Republic, which was marked by the adoption of the Constitution on 2 June 1991;
- The Fourth Republic was established following the presidential elections of 1 December 1991, in which Mr. Blaise Compaoré was elected President of the Republic;
- A second presidential election took place on 15 November 1998;

- A third was held on 13 November 2005.

12. Burkina Faso enjoys political stability thanks to the consensus-based reforms of 2000, which led to the adoption of a new electoral code and the establishment of an independent national electoral commission with a broader mandate and of an electoral system that resembles proportional representation. The smooth running of the 2002 legislative elections, in which as much as 64 per cent of the population participated, resulted in the establishment of a National Assembly that is more representative of the different views held by people in the country. One of the main challenges facing the Government is the need to promote good governance against a backdrop of poverty, limited institutional capacity, vulnerability to economic shocks and subregional instability.

13. The good governance policy adopted by Burkina Faso has been put into practice through several government measures. Regional decentralization and devolution form part of this policy, the purpose being to facilitate broader and more balanced development at the regional level. In this connection, the new General Local Authorities Code was adopted (Act No. 55-2004/AN of 21 December 2004).

2. The President of Burkina Faso

14. The President of Burkina Faso, the Head of State, who is elected every five years by universal suffrage (the presidential term was initially set at seven years and was reduced to five years following a constitutional reform in 2000), ensures respect for the Constitution. He sets the broad outlines of State policy and appoints the Prime Minister. He is the guarantor of national independence, territorial integrity, the stability and continuity of the State, and respect for agreements and treaties (Constitution, art. 36).

3. The Government

15. The Government is responsible for implementing national policy. Executive authority is shared between the President of the Republic and the Prime Minister, who is the Head of Government and is accountable to parliament.

4. The National Assembly (parliament)

16. Parliament consists of a single chamber, the National Assembly. Comprising 111 deputies elected by universal suffrage, the National Assembly holds legislative authority. It includes several parties and has broad powers to oversee government action. Legislative authority is exercised by the National Assembly, which, pursuant to the Constitution, has oversight mechanisms at its disposal whereby it can demand information from the Government (formal parliamentary questions (*interpellations*), written and oral questions, commissions of inquiry and committee hearings) and censure it for actions it has taken. The latter entails a vote of no confidence. The High Court of Justice has jurisdiction to try the President of the Republic and the ministers.

5. The judiciary

17. The judiciary is the guarantor of individual and collective freedoms and is independent (Constitution, art. 129). It ensures respect for the rights and freedoms set forth in the Constitution. Judicial authority is exercised by judges through ordinary and administrative courts.

C. Legal framework for the protection of human rights

1. The rule of law in Burkina Faso

18. The rule of law in Burkina Faso is underpinned by significant commitments. The political will in the country to establish a State governed by the rule of law, in which human rights are respected, guaranteed and protected, is demonstrated not only by the ratification of international human rights instruments but also in constitutional provisions and other national instruments and policy statements.

19. The instruments ratified by Burkina Faso include:

- The International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966 (ratified by Burkina Faso on 4 January 1999);
- The Optional Protocol to the International Covenant on Civil and Political Rights (ratified by Burkina Faso on 4 January 1999);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984 (ratified by Burkina Faso on 4 January 1999);
- The International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 21 December 1965 (ratified by Burkina Faso on 18 July 1974).

20. As a further expression of its commitment to respect for human rights, Burkina Faso has also assumed obligations at the regional level, through, inter alia:

- The ratification on 21 September 1984 of the African Charter on Human and Peoples' Rights, adopted in Nairobi on 27 June 1981;
- The ratification on 23 February 1999 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted by the former Organization of African Unity at Ouagadougou on 9 June 1998.

2. Constitutional guarantees of fundamental rights

21. The Constitution is the highest-ranking foundational legal instrument setting out the fundamental rights and principles that underpin the rule of law. The preamble has the same legal status as the other provisions of the Constitution, of which it is an integral part. The Constitution is thus the foremost of all the norms that contribute to the promotion and protection of all human rights. As such, one of its first provisions states that "all citizens of Burkina Faso enjoy civil and political rights in accordance with the law" (art. 11).

22. The Constitution establishes the hierarchy of instruments in the country's legal system and places international treaties or agreements above laws, provided that they have been properly incorporated into domestic law. The principle of respect for the separation of legislative, executive and judicial powers is set out in the Constitution.

23. The fundamental rights recognized by all States governed by the rule of law are enshrined in the Constitution. Article 1 stipulates, for example, that: "All citizens of Burkina Faso are born free and equal in rights. All are equally entitled to enjoy all the rights and freedoms guaranteed by this Constitution. Discrimination of any kind, in particular on the basis of race, ethnicity, regional provenance, colour, sex, language, religion, caste, political opinion, property or birth, is prohibited."

24. Various freedoms, including freedom of belief, non-belief, association, opinion and expression, are guaranteed by the Constitution (arts. 7 and 8). These constitutional guarantees have allowed for the establishment of particularly active associations working on human rights issues, the fight against discrimination and the promotion of peace and democratic values.

3. Justice and mediation institutions

25. In order to better guarantee human rights, a root and branch reform of judicial institutions was undertaken in 2001. In addition, more recently, in order to make the courts more efficient and more accessible to citizens, the lower courts were reorganized pursuant to Act No. 28-2004/AN of 8 September 2004. Article 1 of the Act states that: "Justice is administered on behalf of the people of Burkina Faso."

26. This restructuring led to the establishment of the Constitutional Council, which "rules on the constitutionality of laws and ordinances, as well as on the conformity of international treaties and agreements with the Constitution" (Constitution, art. 152). It also has jurisdiction over electoral matters or disputes. It monitors the proper conduct, transparency and fairness of referendums and presidential and parliamentary elections and hears electoral disputes. It announces the final results of presidential, parliamentary and local elections. It does not, however, have the right to take up cases on its own initiative. In recent years, the Council has come to play a prominent role: matters are frequently referred to it, and it is asked to issue legal opinions.

27. The former Supreme Court was restructured, leading to the establishment of several institutions to better guarantee the rights of individuals.

28. The Court of Cassation, the highest ordinary court, consists of civil, commercial, labour and criminal divisions.

29. The Council of State is the highest administrative court. It is the court of appeal for decisions issued by administrative tribunals. It rules on appeals on points of law filed against decisions issued by administrative tribunals and specialized courts.

30. The Court of Audit is the highest court with responsibility for supervising the public finances and is competent to rule on cases of mismanagement. It assists the parliament in monitoring implementation of the budget law.

31. The High Court of Justice has jurisdiction to try the President of the Republic and the ministers.

32. At the lower level, justice is administered by several other courts, namely civil courts (civil, commercial and labour) and criminal courts. The scope of their jurisdiction is defined by law. These courts comprise the following:

33. The courts of appeal: as appeal courts, they are competent to rule on decisions handed down by courts of major jurisdiction in civil, commercial and criminal cases, by labour courts and by courts of minor jurisdiction.

34. The courts of major jurisdiction: these are ordinary courts of first instance, each of which comprises a civil, commercial and criminal division. Their jurisdiction is broader than that of other courts.

35. The courts of minor jurisdiction: each is composed of a judge (president of the court), a representative of the public prosecutor's office, a chief registrar and, in some cases, other registrars. They have jurisdiction in civil and commercial cases.

36. The courts of minor jurisdiction are competent to rule on disputes over sums ranging from 100,000 to 1,000,000 CFA francs. The courts of minor jurisdiction are

courts of second instance for decisions handed down by departmental courts and district courts.

37. The departmental courts and the district courts: the district courts were set up to respond to specific needs in Ouagadougou and Bobo Dioulasso, while the departmental courts are located in the country's other departments. This type of court was established to dispense community-based justice (in simple and less serious disputes). The departmental or district courts have jurisdiction in civil and commercial cases involving disputes over sums amounting to 100,000 CFA francs or less. They are also competent to rule in civil proceedings concerning matters such as straying animals, destruction of fields or of growing or stored crops, and breaking and entry of closed premises, when the sum at issue amounts to 100,000 CFA francs or less. These two types of courts meet the people's needs in matters of justice by providing very inexpensive and accessible justice.

38. The labour courts: they are competent to adjudicate disputes involving workers and employers who perform their professional activities in Burkina Faso.

39. The juvenile courts and judges: these are special criminal courts with jurisdiction over offences committed by children under 18 years of age. However, as these courts have only recently been established, the judges are encountering difficulties in practice, particularly with regard to procedure (owing to a lack of legislation on criminal procedure for minors).

40. Administrative courts with jurisdiction over administrative matters operate in parallel with these courts.

41. Burkina Faso has established other judicial institutions, with a view to ensuring the fair administration of justice and safeguarding human rights.

42. The Supreme Council of Justice has been restructured, and judges have been granted a higher status (Act No. 35-2001/AN of 12 December 2001 on the Supreme Council of Justice and Act No. 36-2001/AN of 13 December 2001 on the status of judges, as amended by Organic Act No. 16-2004/AN of 4 May 2004). The Supreme Council issues opinions on several matters, including those related to the independence of the judiciary and the exercise of the right of pardon. It is responsible for adjudicating disciplinary proceedings against judges.

43. A mediation mechanism has been established in Burkina Faso to defend the people's interests, although only modest means are available for its operation. The Office of the Ombudsman (established pursuant to Organic Act No. 22/94/ADP of 17 May 1994) is a non-contentious mediating body. Disputes between citizens and the public administration (the central Government, local governments, public institutions or any other body that serves the public) may be brought to its attention. It is an easily accessible institution the objectives of which include protecting the rights of citizens in their relations with the public authorities. It safeguards and promotes peace in society.

44. In addition to the Court of Cassation, there is also a regional court that is treated as a national higher court in matters of business law. This is the Common Court of Justice and Arbitration, which has its seat in Abidjan. It acts as a court of cassation for decisions rendered by courts of appeal in States members of the Organization for the Harmonization of Business Law in Africa concerning the implementation of the laws developed by the Organization. It is also competent in matters of arbitration.

45. Overall, the State of Burkina Faso has, gradually and within its means, devoted considerable efforts to making justice more effective and strengthening the independence of the judiciary. The broad outlines of the National Action Plan to Reform the Justice System in Burkina Faso for the period 2002–2006 are part of these

efforts, as the objective of the Action Plan is to strengthen institutions, make justice more effective and improve access to justice.

4. Anti-corruption mechanisms

46. Several bodies have been established to combat corruption in all its forms. These include both legislative bodies (the Court of Audit, the General State Inspectorate, the National Fair Competition Board) and regulatory bodies (the National Commission to Combat Fraud, the National Ethics Committee, the High Authority to Coordinate Efforts to Combat Corruption and others). The establishment and setting up of these many institutions and monitoring and oversight mechanisms is testament to the authorities' strong political will to combat corruption and economic crimes. The roles they play and actions they take are essential to the implementation of good governance.

II. Implementation of the Covenant (parts I, II and III)

47. The Constitution guarantees freedom of thought, conscience and religion, freedom of opinion and expression, freedom of association, a multiparty system, freedom of assembly, freedom to demonstrate and the right to participate in the administration of public affairs. In its preamble, it also grants constitutional status to the Universal Declaration of Human Rights, of 10 December 1948, and the African Charter on Human and Peoples' Rights.

48. At the institutional level, a Ministry for the Promotion of Human Rights was established pursuant to Decree No. 2002-461 of 28 October 2002 on the organization of the Ministry for the Promotion of Human Rights. A National Human Rights Commission was also established, pursuant to Decree No. 2001-628 of 23 November 2001. The latter is attached to the Ministry for the Promotion of Human Rights and serves as the national human rights institution. It provides a framework for coordination among the governmental stakeholders concerned with human rights and representatives of associations, movements and non-governmental organizations for the protection and promotion of human rights. While it works on human rights issues, the Commission also acts as an advisory body in that field. The Interministerial Committee on Human Rights and International Humanitarian Law, which is also attached to the Ministry for the Promotion of Human Rights, was established pursuant to Decree No. 2005-100 of 21 February 2005. It is a technical body that supports government policy on human rights and international humanitarian law. The Interministerial Committee constitutes a nationwide framework for coordinating government strategies and policies to promote, protect and ensure respect for human rights and to spread awareness of international humanitarian law.

A. Part I of the Covenant

Article 1: Right of self-determination

49. The right of self-determination is of concern to Burkina Faso. Not only are the rights connected with self-determination included in the list of fundamental rights recognized in the Constitution, they are also incorporated in other domestic legal norms (laws and regulations), in order to ensure their free and effective enjoyment.

50. The sovereignty of the people of Burkina Faso is enshrined in the Constitution. The first provisions of the preamble affirm the commitment of Burkina Faso people to establishing a State governed by the rule of law, "guaranteeing the rights of individuals and groups, freedom, dignity, security, well-being, development, equality

and justice as fundamental values of a pluralist and progressive society free from all forms of prejudice". The Constitution (art. 32) clearly reaffirms that national sovereignty belongs to the people.

51. In addition, the initial provisions of the Constitution relate to the people's right of self-determination, stating that: "All citizens of Burkina Faso are born free and equal. All are equally entitled to enjoy all the rights and freedoms guaranteed by this Constitution." The principle of the enjoyment of civil rights by all citizens, in accordance with the laws and regulations in force, is also reaffirmed in the Personal and Family Code (art. 1).

52. The people's right to initiate legislation is also recognized (Constitution, art. 98). This right is exercised by means of petitions.

53. "All citizens and residents of Burkina Faso enjoy equal protection under the law" (Constitution, art. 4).

54. Citizens' participation and involvement in the life of the nation are provided for in the Constitution and are given expression through their electoral rights (Constitution, arts. 12 and 13).

55. The Constitution also stipulates that "natural wealth and resources belong to the people and shall be used to improve their living conditions" (art. 14). The right to private property and to free enterprise are also recognized in the Constitution (arts. 15 and 16). The Constitution prohibits illegal expropriations and illegal interference with the enjoyment of ownership rights. It lays down rules protecting the rights of individuals whose property is expropriated for public use (fair compensation).

56. In addition to the Constitution, which guarantees the various fundamental rights enabling the social, economic and political development of the Burkina Faso people, the State has taken more concrete steps to allow the people gradually and effectively to reach their potential. These steps include the Government's adoption in August 2005 of a national good governance policy for the period 2005–2015. This policy reaffirms the Government's commitment to promoting good governance. It has led to the development of a strategic framework that creates a link with the Poverty Reduction Strategy Paper and also defines the actions to be taken in connection with the country's international commitments, notably the commitments under the Millennium Development Goals and the African Peer Review Mechanism. The Poverty Reduction Strategy Paper focuses on four main areas, namely: accelerated growth based on equity, improved access to basic social services for the poor, expansion of employment and income-generating opportunities for the poor, and promotion of good governance. The objectives of the national good governance policy are many and demonstrate the Government's commitment to taking action to ensure to the people their recognized fundamental rights. The policy's main objectives include the following:

- Strengthening the process of building a democratic State that is capable of effectively playing its role with regard to setting standards and guiding and promoting socioeconomic development within an atmosphere of participatory governance;
- Strengthening the principles and practices related to democracy and political governance;
- Improving economic good governance as an essential condition for promoting economic growth and reducing poverty;
- Further encouraging a civil society that can influence political and economic decision-making and act as a true social counterweight;

- Reforming the State to adapt to changes at home and abroad and optimizing its efficiency;
- Implementing the principles of accountability and grass-roots participation.

57. In order to accomplish these objectives, the Government constantly seeks out and brings together all the necessary capacity and expertise (human resources, financial means and so forth), with support from international partners such as the United Nations Development Programme (UNDP), the World Bank, UNICEF and the European Union.

58. As a result, Burkina Faso has achieved economic progress. Despite problems related to the export of raw materials (including the decline in agricultural production during the 2004/05 season) and rising oil prices, gross domestic product (GDP) growth rose from 4.8 per cent in 2004 to 7.5 per cent in 2005 (statistics from the Prime Minister's 2005 state of the nation address). Thanks to this growth, real GDP per capita rose by 2.6 points. Based on studies conducted by Burkina Faso on the impact of growth on poverty reduction, it appears that the cumulative effect of the economic growth experienced in 2003 (8 per cent), 2004 and 2005 has helped to reduce poverty in rural and urban areas by about 5 percentage points (from 46.4 per cent in 2003 to 41.4 per cent in 2005).

59. In 2005, notwithstanding the serious difficulties that Burkina Faso faced with regard to food, more than 40,000 tons of foodstuffs were distributed free of charge or sold to needy people at subsidized prices. In addition, the Government continued its efforts to sustainably address the continuing food crisis and ensure food security. Thus, during the 2005/06 agricultural season, there was an estimated 43 per cent surplus of grain. In 2005, a total of 1,984 clean drinking water access points were set up to benefit people in rural areas as part of a two-year water project and works were carried out to provide clean drinking water in five medium-sized cities.

60. Specific actions to benefit the people have also been taken in the field of housing and urban development. In 2005, 11 departmental capitals were redeveloped, making 14,932 plots of land available to the public. In addition, the State is continuing its efforts in this area by clearing serviced lots in several cities. Work has begun on rainwater drainage and sanitation facilities, and the works undertaken in Ouagadougou, the capital, have been completed.

B. Part II of the Covenant

1. Article 2: Guarantees provided by Burkina Faso in order to give effect, for all nationals and foreigners, to the rights set out in the Covenant

61. The rights and freedoms of nationals and foreigners in Burkina Faso are upheld by the State and guaranteed by the Constitution, without distinction of any kind. In that connection, the Constitution (art. 4) provides that: "All citizens and residents of Burkina Faso enjoy equal protection under the law. All persons have the right to have their case heard by an independent and impartial court."

62. Burkina Faso has demonstrated its clear commitment to respect human rights and contribute, through international and regional cooperation, to the social, economic and political development of all peoples. This commitment is solemnly expressed in the preamble to the Constitution: "Reaffirming our commitment to combat all forms of domination and our attachment to democracy; seeking economic and political integration with the other peoples of Africa [...]; endorsing the Universal Declaration of Human Rights, of 1948, and the instruments on economic, political, social and cultural matters; reaffirming our commitment to the African Charter on Human and

Peoples' Rights, of 1981; desirous to promote peace, international cooperation and the pacific settlement of disputes between States while respecting the principles of justice, equality, freedom and sovereignty of peoples."

63. The free movement of persons and goods is also protected by the Constitution (art. 9), as are the freedom to choose one's residence and the right to asylum.

64. The Constitution recognizes the family as the basic unit of society and stipulates its protection by the State (art. 23). Furthermore, it grants freedom to marry and prohibits discrimination in that regard on racial, religious, ethnic, tribal or social grounds.

65. In addition to the Constitution, other legal texts provide for the enjoyment of civil rights, independently of political rights (Personal and Family Code, art. 4). Civil rights are defined in law as "all rights enjoyed by a person in civil relations" (Personal and Family Code, art. 1). The enshrinement of fundamental rights in national laws and regulations, including the Criminal Code, Civil Code, Code of Criminal Procedure, Labour Code and other regulations, reflects the State's desire to ensure and permit the effective enjoyment of these rights. The possibility of invoking these texts before the courts when these rights are violated is guaranteed.

66. In order to ensure their effective enjoyment, the fundamental rights are recognized in the Civil Code; this allows foreigners who have been illegally denied their rights to assert them before the courts. In this connection, article 5 of the Personal and Family Code provides that "foreigners in Burkina Faso enjoy the same civil rights as nationals". Foreigners and stateless persons thus have the right to apply for naturalization under the relevant conditions (Personal and Family Code, arts. 162 and 163).

67. The judiciary is responsible for ensuring or overseeing respect for the fundamental rights and freedoms granted to all individuals by the Constitution (art. 125). Judicial power rests with the judges of the ordinary and administrative courts, whose independence in fulfilling these duties is recognized.

68. Article 1 of the Act of 17 May 1993 on the organization of the judiciary states that justice is administered in the name of the people. The Act also provides that justice should be available free of charge, subject to stamp duties and registration fees.

2. Article 3: Equal rights of women and men

69. Under article 1 of the Constitution, "all citizens of Burkina Faso are born free and equal in rights". Female and male citizens of Burkina Faso have the same rights regarding participation in the administration of the State (Constitution, art. 12). Therefore, they are all subject, without distinction, to the same regulations governing election and eligibility.

70. On 14 October 1987, Burkina Faso ratified the Convention on the Elimination of All Forms of Discrimination against Women, adopted in New York on 18 December 1979.

71. At the African level, in 2005 Burkina Faso ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the African Union in Maputo on 11 July 2003.

72. The right to work is recognized to all persons, under the same conditions. Proceeding from this principle, the Constitution (art. 19) prohibits any discrimination relating to offers of employment or remuneration, in particular where a man and a woman have the same skills and qualifications. Equality between women and men at work is provided for by law (Labour Code, art. 3): "This law prohibits all

discrimination regarding employment or occupation. 'Discrimination' is understood to mean any distinction, exclusion or preference based on race, colour, sex, religion, political opinion [...] or social origin that has the effect of nullifying or impairing equality of opportunity or treatment in relation to employment or occupation."

73. Rights in the area of marriage are also subject to the principle of equality between men and women: "Marriage is based on the principle of equality of rights and duties of the spouses" (Personal and Family Code, art. 235).

74. In order to prevent any attempts to control women or subject them to feudal practices, the law establishes monogamy as the ordinary form of marriage (Personal and Family Code, art. 232). Polygamy is permitted only when the fundamental rights of women are protected (Personal and Family Code, arts. 257–262). Furthermore, forced marriage has been criminalized (Criminal Code, art. 376) in order to prevent young girls and widows, in particular, from being coerced into marriage.

75. All citizens, regardless of sex, have the right to education, under the same conditions. Moreover, women and men enjoy the same civil capacity (Personal and Family Code, art. 628): "Persons of either sex who have reached the age of majority are capable of all civil acts."

76. There is a ministry specifically responsible for the advancement of women, which aims, in particular, to protect women's rights, eradicate violence against them and guarantee their equality with men.

77. Another of this ministry's duties is to implement government policy regarding the socioeconomic advancement of women. It is also tasked with monitoring and evaluating strategies for women's advancement; monitoring education and training programmes for women and girls; promoting women's equal rights and their right to reproductive health; providing information on, and raising awareness of, women's rights; coordinating efforts on behalf of women with relevant partners and structures; and monitoring and evaluating the impact of the activities of women's non-governmental organizations and associations. It also undertakes activities to aid women living in the most disadvantaged provinces, for example building women's centres, acquiring mills, presses and pumps, and providing training. Various associations, including associations of women lawyers and associations tackling female genital mutilation and violence against women, support the activities undertaken by this ministry and by the social welfare ministry to benefit women.

78. The State has adopted several methods for combating female genital mutilation, with the support of its partners in this area. For example, during 2005, 1,093 informal discussions, 42 film screenings and 58 presentations followed by discussions took place, and 1 promotional video was made. Furthermore, reparation was made in 51 cases to women suffering from sequelae of excision. Several visits were carried out to the provinces to monitor action against excision, and 49 meetings were held with provincial committees combating the practice.

79. Besides the activities mentioned above, in order to enhance the social and legal status of women, the State has adopted other measures, particularly in the areas of training and information. For example, in 2005, 35 members of associations and non-governmental organizations were trained in listening and counselling techniques, 40 teachers received paralegal training and 340 women received training on women's rights. Training on gender was provided to 107 persons, both men and women, during the same year. Texts on the subject of the elimination of discrimination against women were translated into the most widely spoken national languages in Burkina Faso, Mooré, Dioula and Fulfuldé, and 3,000 copies were distributed. In addition, in order to educate women, build their capacity and skills and reduce female poverty, mills,

sewing machines, motor pumps, soap, dryers, carts and weaving looms were acquired for women, reaching a total of 338 items in 2005.

80. Such efforts must, however, be continuous, given that, in practice, women in Burkina Faso suffer discrimination and inequality and are sometimes victims of physical and emotional abuse. They are also sometimes disproportionately affected by difficulties in accessing education, especially schooling, and are particularly vulnerable to unemployment. For this reason, the ministry responsible for the advancement of women, the education ministry and the Ministry for the Promotion of Human Rights, along with other technical departments and partners including UNICEF, UNDP and civil society, undertake various activities — literacy efforts, human rights education, awareness-raising, particularly in rural areas, and training in certain trades, such as handicrafts and drying and preserving of fruit and vegetables — in order to achieve appropriate and durable solutions.

81. The involvement of women in political life remains proportionally very low. Women's political representation is lower than that of men. There are few women in the National Assembly: of the current 111 deputies, just 12 are women (10.9 per cent). This weak representation is also observed within the Government, which has just 5 female members out of more than 25 ministers. However, brainstorming sessions have taken place this year (2006) to facilitate the passage through the National Assembly of a law benefiting women, under which a quota would be introduced to achieve a greater proportion of women deputies in the parliament.

82. The Government has made efforts regarding the management of large institutions. For the first time, a woman has been appointed as Ombudsman, and a woman has held the post of Chancellor of the University of Ouagadougou since 2005.

83. In addition, the Government, in 1997, adopted a plan of action aimed at improving the living conditions of rural and urban women by broadening their access to economic resources and building the capacities of female workers by establishing training programmes. Needless to say, such activities must be considered priorities.

3. Article 4: State of emergency

84. The regulations governing situations of threat to the independence of the State or its territorial integrity are strictly observed and are applied only in exceptional cases. The state of emergency is governed by article 59 of the Constitution, which grants exceptional powers to the President of Burkina Faso in such circumstances. The relevant regulations take citizens' rights into consideration. The Constitution provides that a state of emergency must be declared only when the independence, public order or institutions of the Republic are under serious and imminent threat (Constitution, art. 59).

85. In order to protect the population, the Constitution prohibits recourse to foreign military forces. Similarly, in order to avoid subjective decisions, or even arbitrary measures, and to provide sufficient protection for individual rights, the exceptional powers granted to the Head of State are exercised in conjunction with the National Assembly, which must not be dissolved during a state of emergency. The institutions that safeguard citizens' rights are also involved in the administration of the State in these circumstances. Accordingly, exceptional measures may be adopted only after official consultation with the Constitutional Council and the President of the National Assembly and must be communicated by the President of Burkina Faso to the people by means of a public address.

86. Organic Act No. 14-59 of 31 August 1959 on states of emergency provides further, more detailed information on the conditions for the handling of exceptional situations. Thus, a state of emergency declared through a decree of the Council of

Ministers may not be extended beyond 12 days without the authorization of the parliament, which convenes as of right (Organic Act, art. 2). The Organic Act provides a comprehensive list of the rights and freedoms that may be restricted or suspended (art. 3). These rights are mainly those the exercise of which might prolong or aggravate the danger. A decree must be issued by the Council of Ministers to lift the state of emergency as soon as order and peace are sufficiently restored (Organic Act, art. 6).

87. In any event, a state of emergency has never been declared in Burkina Faso under a democratic government.

4. Article 5: Prohibition of narrow interpretations of the Covenant

88. The Constitution prohibits any restriction of individual rights under the Covenant. In this connection, we recall that the State of Burkina Faso has expressed its attachment to its international commitments. The Constitution (art. 151) thus enshrines the precedence of international treaties over national legislation: "Duly ratified or approved treaties and agreements shall take precedence, once promulgated, over laws, provided that the agreement or treaty concerned is implemented by the other party."

89. The preamble to the Constitution expresses the clear and strong commitment of Burkina Faso to human rights in general (particularly the Universal Declaration of Human Rights, of 1948) and to the international instruments on economic, social political and cultural matters.

C. Part III of the Covenant

1. Article 6: Right to life

90. The right to life is proclaimed and guaranteed not only in the Constitution, in article 2 ("The protection of life, security and physical integrity is guaranteed"), but also in other legal texts, including the Criminal Code, which provides for the punishment of any person who endangers the life of another.

91. All violations of the right to life, including murder, infanticide, parricide, poisoning, abortion and genocide, are subject to severe penalties, primarily under articles 313 to 347 of the Criminal Code.

92. Crimes against humanity, such as summary executions, wilful endangerment of life and acts of destruction carried out with discriminatory intent, are strongly condemned by Burkina Faso society. Articles 313 to 317 provide specifically for the prevention and punishment of these categories of offence. The nation's desire to combat and avert these criminal acts is reflected, in particular, by the refusal to establish statutory limitations in respect of crimes against humanity, which are indefeasible (Criminal Code, art. 317). Incitement to suicide is also punishable (Criminal Code, art. 336).

93. Discussions have been held on abolishing capital punishment, which forms an integral part of the set of criminal penalties applicable in Burkina Faso. Protecting the right to life is a key element of the Burkina Faso system, so much so that, in practice, the death penalty is rarely carried out despite being regularly imposed. Indeed, the last occasion on which a death sentence passed by an ordinary court was enforced was before 1980. What is more, the process for enforcing a death sentence is in itself protective of the condemned person. The individual has the right to request clemency from the President of Burkina Faso: "The execution cannot proceed until a decision has been taken on the application for a pardon in accordance with the Code of

Criminal Procedure” (Criminal Code, art. 17). This desire to protect life is reflected in various other criminal provisions. For example, pregnant women sentenced to death may not be executed until after their delivery (Criminal Code, art. 19).

94. A person sentenced to death may, like other convicted persons, be granted amnesty (Act No. 15-61/AN of 9 May 1961 on amnesty, art. 10) or a pardon (Act No. 60 of 18 April 1961 on pardons, arts. 1–3).

2. Article 7: Prohibition of torture and other cruel, inhuman or degrading treatment

95. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984, was ratified by Burkina Faso on 10 September 1998.

96. Article 2 of the Constitution prohibits, and provides for the punishment of all forms of, torture and other similar treatment: “Slavery, slavery-like practices, inhuman, cruel, degrading or humiliating treatment, physical or mental torture, abuse or ill-treatment of children and all forms of degradation of persons are prohibited and punishable by law.”

97. The perpetrators of crimes involving the use of torture or barbaric acts are severely punished (Criminal Code, art. 325). Violations of physical or mental integrity, torture and other forms of violence are punishable by law (Criminal Code, arts. 313, 314 and 327).

98. In addition, harsh penalties are in place to protect individuals from any form of abuse of authority by State agents or officials. Any State official or representative who, directly or indirectly, commits an arbitrary act or one that violates individual liberty, the civic rights of one or more persons or the legislation in force is liable to a prison sentence of between 5 and 10 years (Criminal Code, art. 141). This sentence increases to 10 to 20 years for any perpetrator of abuse who holds the position of minister (Criminal Code, art. 142).

99. Article 167 of the Criminal Code also provides for penalties for perpetrators of abuse of authority: “Any civil servant or public official, government or police administrator, agent or officer, judicial marshal, police commandant or deputy commandant who, without just cause, uses violence or causes violence to be used against persons in the performance of his or her duties, or while on duty, [shall be punished] according to the nature and gravity of the violence used.”

3. Article 8: Prohibition of slavery

100. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, of 21 March 1950, was ratified by Burkina Faso on 17 July 1962.

101. Burkina Faso has established legal protection measures against slavery that are applicable to all citizens, regardless of whether they are in employment.

102. Slavery is clearly prohibited in article 2 of the Constitution and is punishable under the criminal law (Criminal Code, arts. 314 and 315). Burkina Faso has not only developed general protection measures, it has also established specific regulations to combat slavery-like practices in environments conducive to them, that is in workplaces.

103. Forced labour is categorically prohibited, and workers in Burkina Faso may not be subjected to slavery-like treatment in the exercise of their functions. Article 5 of the Labour Code provides that: “Forced or compulsory labour is strictly prohibited. The term ‘forced or compulsory labour’ shall mean all work or service which is

exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily.”

104. Public officials are also protected and are treated in accordance with international labour regulations. Public officials may not be treated as slaves. Legal measures have been established for their protection. Article 46 of the Act of 28 April 1998 on the rules governing public service employment and employees states that: “Independent of the protection that is their due under the criminal law and the specific laws against threats, insults or slander to which they may be subjected, the Government is required to protect public officials from the commission of harmful acts against them on account of their functions, in the performance of their duties, or while they are on duty.”

105. Work undertaken by detainees is strictly regulated so as to protect them from being enslaved or subjected to slavery-like practices or treatment while in prison. Although such work is classified as “prison labour”, that is work performed pursuant to a court sentence, the working hours and rest days (Sundays and public holidays) comply with the general regulations and principles governing all labour, such as article 105 of the Decree (Kiti) of 1 December 1988 on the organization, rules and regulations of detention facilities. Several articles of this Decree focus on labour regulation. For example, article 102 states that work should not be considered as an additional punishment for detainees, but as a form of social rehabilitation. The Decree also provides that any paid work performed by detainees must be undertaken in compliance with general conditions or regulations on such matters as workplace safety, hygiene, health and compensation for work-related accidents. Articles 111 to 115 specifically address these areas.

106. Burkina Faso legislation strictly regulates child labour (Labour Code, arts. 145–149) in order to combat child exploitation and child slavery in the workplace. Children may only start working from the age of 15, which is the minimum age of employment.

4. Article 9: Right to liberty and security of person

107. Burkina Faso, through its Constitution and institutions such as the justice system, guarantees the liberty and security of every individual. This is evidenced, in particular, by the provisions of article 3 of the Constitution, which state that: “No one may be deprived of his or her liberty unless he or she has been charged with an offence punishable by law. No one may be arrested, held in custody, deported or exiled except as provided for by law.”

108. Article 125 of the Constitution designates the judiciary as the guardian and guarantor of individual and collective freedoms. Recognizing the value of individual liberty, the Burkina Faso legislature has introduced an array of laws to provide protection from abuse or injustice that may occur during lawful detention.

109. Burkina Faso, out of concern for the security of its citizens, has reformed the laws governing certain institutions responsible for internal security and strengthened the protection of persons and their property through the establishment of a municipal police force. Act No. 32-2003 of 14 May 2003 on internal security sets forth the general principles in this area. Article 2 specifies that the purpose of internal security is “to ensure the continuous protection of persons and property throughout the national territory, to guarantee the security of State institutions, and to ensure respect for the law and the maintenance of peace and public order”. The State has made great efforts on the ground to provide the institutions responsible for security with the minimum equipment necessary to carry out their task. Steps have also been taken to recruit and train staff.

110. Efforts are being made to maintain a general level of security. However, there is some concern in this regard among the population owing to the resurgence of banditry, particularly on the major national highways and borders. Insecurity in West Africa, due primarily to the by political and social conflicts in neighbouring countries, is one of the main causes of the concern felt by the Burkina Faso population. The armed forces of the gendarmerie and police are tackling these problems, and the State is continuing to look for solutions to the lack of response mechanisms.

111. The Government has set itself the target of establishing a modern security force that is able to tackle new forms of crime and meet citizens' expectations. In an effort to tackle serious crime, a decree governing the establishment and functioning of local security committees and the implementation of the community policing action plan has been issued.

112. Criminal legislation sets out the circumstances under which a person may be deprived of his or her liberty. These include the initiation of criminal proceedings leading to arrest of an individual on suspicion of having committed, or having been an accessory to, an offence. The criminal law limits the use of deprivation of liberty and the circumstances under which it may be employed for the purposes of an investigation or criminal proceedings. Police custody, which is a type of deprivation of liberty, is restricted to a maximum of 72 hours for ordinary offences (Code of Criminal Procedure, art. 62). It may be extended for an additional 48 hours. However, in order to protect the person held in custody and to prevent abuse on the part of the requesting criminal investigation officers, the law stipulates that requests for extensions must be referred to and considered by the State prosecutor or the investigating judge. The authority to which the request is referred may refuse authorization if the request is found to be inappropriate. This is an implicit oversight power granted to judges to enable them to fulfil their role as guardians of freedoms. Specific laws provide for longer periods of police custody for serious offences, such as terrorism, drug trafficking, criminal association and breaches of State security, while stipulating the safeguards necessary for the respect of human dignity. For more than two years, seminars and discussion workshops have been organized by the Ministry for the Promotion of Human Rights, the Burkina Faso Bar Association and other associations with the aim of improving the situation and condition of individuals in police custody.

113. Pretrial detention, another type of deprivation of liberty, may be ordered in the case of an accused, which is the term used during the investigation to refer to a person suspected of having committed an offence. The implementation of this measure is also subject to rules designed to protect the individual concerned. Thus, in accordance with article 136 of the Code of Criminal Procedure, it may be used only in exceptional cases. The duration of pretrial detention, which varies according to the location of the individual and the length of the sentence that may be imposed for the offence, is in principle from 5 days up to a maximum of 6 months (Code of Criminal Procedure, arts. 137 and 138). Where necessary, the six-month period may be extended. Legal safeguards are applied in those cases so as to prevent abusive or arbitrary detention. The extension order granted by the investigating judge, as well as the arguments of the prosecutor for the extension, must be specially substantiated (Code of Criminal Procedure, art. 138).

114. Persons held in pretrial detention have the right to request release on bail at any stage of the proceedings. Under articles 140 and 141 of the Code of Criminal Procedure, "a request for bail may be made at any time to the investigating judge by the accused or his or her counsel [...]. Bail may in any case also be requested by any accused or defendant at any stage of the proceedings". It should be noted that most pretrial detainees avail themselves of this right.

115. To give full effect to the right to liberty, the law specifies violations of the right to liberty and penalties for such violations: “Any public official or other government representative who gives, or causes another person to give, an order to perform an arbitrary act or one that violates individual liberty, the civic rights of one or more persons or the legislation in force shall be liable to between 5 and 10 years’ imprisonment. If that individual can prove that he or she acted on orders from superior officers [...] he or she shall be exempt from punishment, which in this case shall be imposed only on the superior officers who gave the order” (Criminal Code, art. 141). The Criminal Code expressly provides for damages calculated on a per person and per day of arbitrary detention basis (Criminal Code, art. 144). The possibility of bringing criminal charges against persons in authority who violate the right to individual liberty demonstrates the country’s commitment to this right. Ministers are subject to punishment when they violate a person’s liberty, and the punishment in such cases is more severe: “Any minister who orders or performs acts mentioned in the aforementioned article [article 141] and who refuses to put an end thereto shall be liable to between 10 and 20 years’ imprisonment.”

116. The law also provides that: “Any suspect arrested under a warrant to bring him or her before an investigating judge or prosecutor and held for more than 24 hours without being questioned shall be deemed to have been arbitrarily detained. Any judge or official who has ordered or tolerated such arbitrary detention shall be liable to the penalties provided for arbitrary detention” (Code of Criminal Procedure, art. 124).

117. Unlawful confinement, abduction and illegal arrest are also prohibited and punishable by law (Criminal Code, art. 356 et seq.).

5. Article 10: Rights of detainees and persons deprived of their liberty

118. Burkina Faso legislation proscribes any unlawful or arbitrary detention or custody (Constitution, art. 3).

119. The Burkina Faso penitentiary system takes into account the status and category of detainees in relation to their treatment in prison. Pretrial detainees are therefore treated differently from convicted prisoners. Pretrial detainees, who are normally held in correctional facilities, are allowed to keep or acquire their own clothes. They are also accorded rights not granted to convicted prisoners owing to their particular status. For example, they are exempt from prison labour: “Pretrial detainees are not required to undertake prison labour but may request to do so” (Decree (Kiti) of 1 December 1988 on the organization, rules and regulations of detention facilities, art. 16).

120. Detainees in Burkina Faso prisons are separated by category. Under article 10 of the Decree (Kiti) of 1 December 1988:

“Detainees shall be divided into categories, ensuring the separation of:

- Women from men;
- Minors aged under 18 years from adults;
- Pretrial detainees from convicted prisoners when the same facility is used as a remand prison and a correctional facility.”

121. A special prison regime is also in place for convicted minors, that is persons aged under 18 years, and takes into account their age and rehabilitation needs (Decree (Kiti) of 1 December 1988, art. 37).

122. Education and reintegration monitoring committees have been established in every prison with a view to facilitating the reintegration and rehabilitation of convicted prisoners and other detainees (Decree (Kiti) of 1 December 1988, art. 5).

This demonstrates the rehabilitative nature of the treatment afforded to convicted prisoners.

123. However, it should be noted that, owing to the widespread poverty faced by Burkina Faso, the implementation of these protection rules has been slow despite continuing efforts to that end.

6. Article 11: Imprisonment for inability to fulfil a civil or contractual obligation

124. Contractual obligations, disputes arising therefrom, dispute settlement procedures and penalties are governed in principle in Burkina Faso by civil law and, in particular, contract law. Article 1134 of the Civil Code states clearly that: "Agreements lawfully entered into take the place of law for those who have made them. They may be revoked only by mutual consent, or for causes authorized by law."

125. The penalty of imprisonment is provided for only in criminal cases. It is one of the possible penalties for breaching criminal law. Provision is made for civil imprisonment, but only following a criminal conviction. A person may be compelled by civil imprisonment to pay a fine, costs or damages imposed in connection with an offence pursuant to a decision of the criminal court.

7. Article 12: Freedom of movement of persons

126. Article 9 of the Constitution guarantees freedom of movement, both within the country and across its borders: "The free movement of persons and goods, the freedom to choose one's residence and the right to asylum are guaranteed under the laws and regulations in force."

127. This freedom of movement is strengthened by the relevant Economic Community of West African States (ECOWAS) convention, to which Burkina Faso is a High Contracting Party. Established in 1975, ECOWAS guarantees the free of movement of persons and goods and freedom of establishment among its members. In practice, some challenges to the enjoyment of these rights have been noted in certain member countries. In spite of these challenges, which include residence card requirements, even for nationals of other member countries, ECOWAS provides a legal framework that allows for the realization and effective enjoyment of freedom of movement, establishment and residence within the member countries, including within and at the borders of Burkina Faso. An ECOWAS identity card has even been introduced and has enjoyed considerable success in Burkina Faso, particularly among ECOWAS nationals pursuing commercial or economic activities.

128. Order No. 84-49 of 4 August 1984 governs the conditions for the entry, stay and departure of nationals and foreigners. While guaranteeing the right of nationals and foreigners to freedom of movement and of the latter to freedom of establishment and residence, the Order sets conditions for the exercise of these rights and freedoms.

129. Article 5 of the Personal and Family Code also recognizes in a general manner the right of foreigners to the enjoyment of civil rights. It provides that: "Foreigners in Burkina Faso enjoy the same civil rights as nationals. However, their enjoyment of a right may be expressly denied by law or be made conditional on reciprocity, subject to the provisions of international conventions."

8. Article 13: Legal protection of expelled persons

130. Foreigners may be removed from the country under Burkina Faso law if they fail to comply with, or violate, the rules on the entry and stay of foreigners contained in articles 9 to 12 of Order No. 84-49 of 4 August 1984. Removal is simply the consequence of non-observance of these rules, which places the foreign national

concerned in an irregular situation under the law. Foreigners may also be deported in the following cases:

- If they are guilty of a crime (a serious or ordinary offence) and have been convicted under criminal law by a criminal court and banned from the country, as provided for under article 44 of the Criminal Code. Needless to say, the rights of the accused are respected throughout the proceedings in these cases, particularly the right to be assisted by counsel;
- If they have disturbed the peace or pose a threat to State security such that their expulsion as an administrative measure is imperative given the urgency and gravity of the situation.

9. Article 14: Equality of all persons before the courts

131. The Constitution proclaims the equality of all nationals and foreigners before the law and the courts. It provides that: “All citizens and residents of Burkina Faso enjoy equal protection under the law. All persons have the right to have their case heard by an independent and impartial court” (Constitution, art. 4).

132. This right is also guaranteed by law, in Act No. 22-99/AN of 18 May 1999 on the Code of Civil Procedure, which stipulates that: “All persons have the right to have their case heard by an independent and impartial court without undue delay. Judges are obliged to apply the law. They may not bring in a finding of *non liquet* on the ground of the silence or obscurity of the law, as to do so shall constitute a denial of justice” (Code of Civil Procedure, art. 3). Article 2 of the Code of Civil Procedure sets out the right of all persons to bring their case before the competent national courts if they consider that their fundamental rights as recognized in and guaranteed by the Constitution, international conventions, laws and regulations have been violated. In accordance with article 5 of the Code of Civil Procedure, a person must have an opportunity to present evidence in his or her defence before a judgement is passed.

133. Any person against whom criminal proceedings are brought is presumed innocent, in accordance with the Constitution. The Constitution also guarantees the right freely to choose a lawyer.

134. The Code of Criminal Procedure establishes the rules governing the prosecution and trial of alleged offenders. There are two main types of procedure: one for cases involving the alleged commission of so-called flagrant offences (Code of Criminal Procedure, arts. 52–72), and the other, known as the preliminary investigation (Code of Criminal Procedure, arts. 73–75), for cases involving offences committed in other circumstances, that is those not categorized as flagrant.

135. Police custody, house searches, searches of premises and seizures are strictly regulated by law (Code of Criminal Procedure). The same is true of the various elements of the investigation, including the hearing of witnesses and questioning of suspects and the imposition of pretrial detention. The procedure prescribed by law adheres to the main international principles such as the bringing of cases before the courts without undue delay and the treatment of the accused during the proceedings in a manner that respects his or her human dignity. Pretrial proceedings are conducted with full respect for human rights. For example, in order to guarantee the right to a hearing before an impartial court, pursuant to article 48 of the Code of Criminal Procedure, investigating judges may not hear cases they have investigated.

136. In certain cases, the accused has the right to request time to prepare his or her defence (Code of Criminal Procedure, art. 396). The right to an interpreter for persons who do not understand French, the working language of the courts, and the right to reject an interpreter are guaranteed (Code of Criminal Procedure, art. 407). Accused

persons have the right to choose and be assisted by defence counsel from the moment of their first appearance before the investigating judge (Code of Criminal Procedure, arts. 111 and 113). Article 4 of the Constitution stipulates in this regard that: "The right to a defence, including the right freely to choose a lawyer, is guaranteed before all courts."

137. The right to communicate at any time with one's lawyer is guaranteed in article 112 of the Code of Criminal Procedure. The right to refuse to make a statement during initial questioning in the absence of one's lawyer is also provided for, in article 111 of the Code. In all cases, "defendants appearing before the criminal chamber shall be assisted by counsel as provided for in the Code of Criminal Procedure" (Act of 17 May 1993 on the organization of the judiciary, art. 13).

138. Hearings are public but may be held in camera pursuant to article 400 of the Code of Criminal Procedure if the circumstances so require, such as in the trial of a minor or for reasons of security.

139. Persons may not be prosecuted for offences if they can prove that they have already been tried, convicted or sentenced for the same offences (Code of Criminal Procedure, art. 674, and Criminal Code, art. 4), or if they can provide evidence that they have been pardoned in connection with those offences.

10. Article 15: Principles of the legality of offences and penalties and the non-retroactivity of the law

140. Articles 3 and 5 of the Constitution set forth the principles of the legality of offences and penalties and the non-retroactive nature of the law. According to article 5 of the Constitution: "Everything that is not prohibited by law is permitted, and no one may be compelled to do anything that is not required by law. Criminal law is not retroactive. No one may be tried or punished except on the basis of a law promulgated and published prior to commission of the punishable act."

141. The legislature has included these principles in the Criminal Code so that they may be implemented in practice. Article 1 of the Code contains the following rule to protect individuals: "No offence may be punished and no sentence handed down except as established by law."

142. Article 2 of the Criminal Code provides for the non-retroactivity of the law. It proscribes the punishment of acts that were not prohibited by law at the time they were committed. This article, exceptionally, allows for a law to be applied to an individual retroactively when it is more favourable to him or her. Thus, a law providing for a lighter sentence or the discontinuation of a prosecution would be applied as being favourable to the individual, whereas a law providing for harsher punishment or criminalizing an act that was not previously prohibited would not.

143. Judges respect all these protection rules in practice, with the result that there is virtually no case law concerning these principles.

11. Article 16: Recognition as a person before the law

144. Recognition as a person before the law is guaranteed in Burkina Faso. Under article 2 of the Personal and Family Code, legal personality commences at birth and ceases on death. Legal personality is manifested by the attribution of a surname and one or more first names, as stipulated in article 31 of the Personal and Family Code.

145. Recognition as a person before the law in criminal matters is reflected in the personal and individual nature of criminal penalties, in accordance with article 5 of the Constitution.

12. Article 17: Right to privacy

146. The inviolability of the home, of private and family life and of correspondence is enshrined in the Constitution (art. 6). Breaches are permitted only in the cases provided for by law.

147. In the event of an unlawful breach, the law provides for criminal penalties. Invasion of privacy is punishable under articles 371 to 373 of the Criminal Code. Recording, phone-tapping (clandestine or illegal) and photographing of a person in a private place without his or her consent are punishable by a prison sentence ranging from 2 to 12 months and a fine. The equipment used to commit the offence and the proceeds of the offence may be placed in judicial custody, seized or confiscated (Criminal Code, art. 371). In this case, the victim may request compensation. The opening or deliberate destruction of correspondence is also punished (Criminal Code, art. 375). Attacks on honour and reputation have likewise been criminalized, thereby making it possible for any victim to bring legal action to put a halt to them (Criminal Code, arts. 361–370). In practice, victims of defamation and of violations of the right to dispose of one's image often file a criminal complaint against the perpetrators.

148. House searches, searches of premises and seizures are strictly regulated (with regard to time of day, security measures, respect for the rights of the defence and so forth). These rules are established in articles 55 to 58 of the Code of Criminal Procedure among others. In a preliminary investigation, for example, house searches and seizures may not be undertaken without the consent of the person concerned (Code of Criminal Procedure, art. 74).

13. Article 18: Right to freedom of thought, conscience and religion

149. Freedom of belief, non-belief, conscience, religious opinion and worship and the right to observe the customs of one's choice are guaranteed by the Constitution (art. 7). Everyone is entitled to these freedoms subject to respect for the law, public order, morals and the human person.

150. Victims of an infringement of these freedoms have a legal tool to ensure the cessation of the infringement: the criminal law allows them to initiate proceedings to that end. Any victim of such an infringement may file a complaint under article 132 of the Criminal Code, which establishes a penalty of 1 to 5 years' imprisonment and a 5-year banning order for any act of discrimination or manifestation contrary to freedom of conscience or freedom of religion that is likely to bring persons into conflict with each other.

151. In Burkina Faso, people tolerate and accept each other's religious practices and customs. The different religious communities coexist peacefully. Religious communities sometimes even organize meetings to contribute to continued peace in society and to the country's development.

14. Article 19: Freedom of opinion and of expression

152. Freedom of opinion and of the press and the right to information are guaranteed under the Constitution (art. 8). In Burkina Faso, everyone has the right to express and disseminate his or her opinions in accordance with the statutory rules in force. These freedoms are enshrined by law. The Information Code (arts. 1, 4 and 5) states that: "The right to information is a fundamental right of every citizen of Burkina Faso. News agencies and radio, television and film organizations may be created and operated freely under the laws and regulations in force. Foreign communication and news productions may be broadcast provided that they do not constitute offences against morality, national sovereignty or professional ethics."

153. The reality of these freedoms reflects the commitment of the Government to building a democratic State.

154. Burkina Faso has four television companies, three private and one public. There are 73 radio stations, of which 20 are private and commercial, 20 are not for profit, 18 are religious, 4 are international, 11 are public and 6 are local. The print media include more than 100 newspapers, of which 4 are dailies, 15 are weeklies, 17 are monthlies and approximately 60 are specialized. The press as a whole is overseen by the High Council on Communication, which is responsible for media ethics and regulation of the audiovisual sector. It is also mandated to ensure diversity of opinion in the media and enforcement of the laws relating to information.

155. In 2005, with a view to upgrading the existing infrastructure, the State of Burkina Faso made efforts to expand and strengthen public radio and television coverage throughout the country. It is also endeavouring to develop community media by creating regional rural radio stations. It supports the private print media. In 2005, for instance, 150 million CFA francs was allocated to assist that segment of the media. Fifty private media outlets benefited from the subsidy.

156. In Burkina Faso, the press provides a means of realizing the freedom to express or convey opinions. Indeed, in Burkina Faso, people have turned regularly and increasingly to the media (the print media and radio in particular) to express their views of the behaviour of politicians and other authorities. They also resort to the media to express their views or offer criticism of electoral, economic and social policies. Obtaining access to economic and social information is difficult, however, in part as a result of insufficient funding. Nevertheless, the Government is making every effort to facilitate access to such information (seminars, leaflets, awareness-raising initiatives, radio and television programmes and so forth).

15. Article 20: Prohibition of incitement to war

157. The formation of armed mobs is prohibited in Burkina Faso (Criminal Code, art. 127). It is also prohibited to incite or organize violent or concerted action in an attempt to undermine national defence (Criminal Code, art. 106). Clandestine or unlawful recruitment on behalf of foreign powers is likewise prohibited by law (Criminal Code, art. 107). These offences are punishable by imprisonment or death, depending on their seriousness.

158. It should be recalled that article 132 of the Criminal Code provides for the punishment of any act of discrimination the aim of which is to curtail freedom of conscience and religion and which is likely to create social enmity. In order to provide improved and broad protection against discrimination, the law (Criminal Code, art. 132, para. 2) defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural and any other field of public life”.

16. Article 21: Freedom of assembly

159. Special provisions are devoted to freedom of assembly and freedom to demonstrate, which are embodied in article 7 of the Constitution. Articles 1 and 6 of Act No. 22-97 of 21 October 1997 provide for freedom to demonstrate and freedom of public and private assembly, subject to compliance with the relevant legal requirements.

17. Article 22: Freedom of association

160. Article 21 of the Constitution states that: “Freedom of association is guaranteed. Everyone has the right to establish associations and to participate freely in the activities of those associations. Associations must operate in accordance with the laws and regulations in force. The right to organize is guaranteed. Trade unions shall carry out their activities free from constraints or restrictions other than those prescribed by law.”

161. In Burkina Faso, freedom of association is recognized. Article 2 of Act No. 10/92 ADP of 15 December 1992 on freedom of association states that: “Associations may be formed freely, without prior administrative authorization. Their validity is governed by general legal principles applicable to contracts and obligations [...]. They can be recognized as public-interest associations.”

162. All natural and legal persons are entitled to this freedom. Nationals and foreigners may enjoy this freedom (Act No. 10/92 ADP of 15 December 1992, art. 1) subject to compliance with the relevant rules.

163. Freedom of association is an undeniable reality in Burkina Faso. In 1999, there were an estimated 6,000 NGOs and approximately 12,000 cooperative associations, trade unions and religious or other associations. These numbers have been increasing year on year.

164. Associations may meet, demonstrate and organize activities freely in Burkina Faso. This freedom has enabled civil society to play a positive role in building democracy and to help foster the values of pluralism. In Burkina Faso, a large number of associations work freely to defend human rights.

165. The right to organize is also recognized. The Constitution guarantees the right to strike (art. 21). Article 271 of the Labour Code states that: “Legally established trade unions are free to combine their efforts in the study and defence of their occupational interests. They may form federations at the local, regional or national levels.”

166. The trade union movement of Burkina Faso has shaped the country’s history. From the 1960s to the 1980s, trade unions played an important role from a social and political perspective, as some of their demands led to significant political and social changes. There is also a diversity of trade unions. There are 7 trade union federations and some 15 independent trade unions. Trade unions rally and demonstrate freely in Burkina Faso. Needless to say, the enjoyment of the right to freedom of association requires respect for the laws and regulations in force.

167. Recognition of the right to freedom of association extends to political parties, the number of which has been growing since the inception of the democratic process in Burkina Faso. In this regard, under the Constitution (art. 13), political parties and formations may be created freely.

18. Article 23: Protection of the family

168. According to the Constitution (art. 23), the family is the basic unit of society, and the State must protect it. This recognition of the family is reiterated in article 31 of the Personal and Family Code, which states that the family, founded on marriage, is the basic unit of society.

169. Significant steps have been taken to protect the family, particularly women and children, who, before the establishment of the Personal and Family Code, enjoyed fewer legal protections. Women and children born out of wedlock were disadvantaged by their former status. Indeed, that was one of the reasons for the introduction of the

Code, which has been in force since 4 August 1990 (the Code was established pursuant to Zatu (act) No. AN VII-0013-FP-PRES of 16 November 1989).

170. The Personal and Family Code was also introduced in order to eliminate such harmful customs as the payment of bride prices and levirate marriage and the injustices suffered by women in inheritance.

171. The Government uses various means to promote public familiarity with the Code. In 2005, for example, it organized 975 educational talks, 45 presentations followed by discussions, 76 radio broadcasts and 92 film screenings/debates. Four hundred and two copies of the Code have been sold at a subsidized price.

172. The rules governing the family, marriage, married life and parental obligations take into account the principle of equality between women and men. Marriage must be entered into freely: "Marriage follows from the free and conscious wish of a man and a woman to take one another as spouses" (Personal and Family Code, art. 234). With a view to furthering the happiness of the spouses and overcoming socioeconomic barriers and feudal attitudes, monogamy is established as the ordinary form of marriage. Nonetheless, polygamy is permitted on certain conditions (Personal and Family Code, art. 232). One condition is the future spouses' joint decision, freely taken, to authorize one marriage or more after the first (Personal and Family Code, art. 262). Their genuine consent (regarding the choice of a polygamous marriage) must be set down in a document certifying that consent. The document must be signed by both parties. To that end, a statement by the prospective spouses is made before the registrar (Personal and Family Code, arts. 258 and 259).

173. To prevent early marriage, marriage may be contracted only between "a man over 20 years old and a woman over 17, except where a dispensation is given on compelling grounds" (Personal and Family Code, art. 238). Marriage is considered non-existent in the absence of the express consent of the prospective spouses (Personal and Family Code, art. 240). Forced marriage is prohibited and is a punishable offence (Criminal Code, art. 376). The law further states that "marriage is based on the principle of equality of rights and duties of the spouses". Equality also characterizes the management of the household, which is shared: "The spouses shall assume joint moral and material responsibility for the household. In polygamous families, each wife forms a household with her husband" (Personal and Family Code, art. 293).

174. The system of marital property is chosen by mutual agreement of the spouses. The spouses may have any contractual arrangement apply to their property, provided that it is not incompatible with morality or with the legal provisions set out in this regard (Personal and Family Code, art. 311).

175. The rules on divorce are the same for the husband as for the wife. "Divorce may follow from the mutual consent of the spouses recorded by a civil court or from a court decision pronouncing the dissolution of the marriage at the request of one of the spouses" (Personal and Family Code, art. 394). The main effects of divorce are the same for both spouses. Divorce terminates the reciprocal rights and duties of the spouses (Personal and Family Code, art. 392).

176. In the children's interests, once the divorce is pronounced, "the judge may, at the request of one of the spouses who has custody of one or more children, authorize him or her to remain in the most recent family residence pending liquidation of the marital property regime" (Personal and Family Code, art. 394). In addition, the divorce does not absolve the father and mother of their rights and duties vis-à-vis their children (Personal and Family Code, art. 401). However, some rules that take into consideration the interests of the child may ease this obligation for either parent.

177. In 2005, the courts resolved 2,562 disputes relating to paternity, domestic issues, maintenance, inheritance and forced marriage. Moreover, 983 people received help in obtaining civil status documents and 803 marriages were regularized. Regarding education for family life, talks and presentations followed by discussions on family planning were held, and 33 initiatives to promote the sexual and reproductive health of adolescents were carried out.

178. In 2005, as part of efforts to foster the socioeconomic advancement of the family, 486 women's associations and groups benefited from advisory services, and 366 were helped to obtain credit. Several hundred visits were conducted to follow up on the activities of the associations and groups. Training was given in home economics (324 girls), modern and traditional dyeing (150 female dyers) and management techniques for small production units (90 female producers) and in the context of the Family Assistant Project (40 girls).

19. Article 24: Protection of children

179. Article 23 of the Constitution states that: "Children have equal rights and responsibilities in their family relationships. Parents have a natural right and a duty to raise and educate their children. They owe them respect and assistance." The State must work towards the advancement of children (Constitution, art. 24).

180. On 31 August 1990, Burkina Faso ratified the Convention on the Rights of the Child, of 20 November 1989. On 25 July 2001, it also ratified the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182). Similarly, on 8 June 1992, Burkina Faso ratified the African Charter on the Rights and Welfare of the Child, adopted by the Organization of African Unity in Addis Ababa on 11 July 1990.

181. The birth of every child is certified by the creation of a civil status record (Personal and Family Code, art. 6). "Any birth that has taken place in the territory of Burkina Faso must be declared to the registrar of the place of birth. The declaration must be made within two months of the date of birth" (Personal and Family Code, art. 106). To facilitate this declaration, all public and private hospitals, maternity units and health-care institutions keep registers in which all births at the establishment in question are recorded (Personal and Family Code, art. 108). Therefore, any person having found an infant must make a declaration to the registrar (Personal and Family Code, art. 110).

182. The law requires that everyone should have a family name and one or more given names (Personal and Family Code, art. 31). It also establishes that Burkina Faso citizenship is acquired after birth (Personal and Family Code, art. 134). In addition, by law (Personal and Family Code, arts. 141 and 142), a child born in Burkina Faso to unknown parents is a national of Burkina Faso and a newborn found in the territory of Burkina Faso is assumed to have been born in Burkina Faso (and is therefore assumed to be a national of Burkina Faso).

183. In inheritance matters, no distinction is made between children (those who are legitimate, those who are born out of wedlock and so forth); all are equal. In this connection, article 733 of the Personal and Family Code states that: "Children or other descendants inherit from their father and mother or other ascendants without distinction as to the origin of the filiation or their sex. They inherit in equal portions and by heads when they are all in the first degree and take in their own right."

184. Burkina Faso is experiencing such problems as trafficking in children. To address this situation, the Government has implemented action plans and strengthened legislation designed to combat the practice. Act No. 38-2003/AN of 23 May 2003, for example, defines trafficking in children and establishes penalties for it.

185. In criminal matters, minors are protected even when they are in conflict with the law. Criminal jurisdictions for minors (juvenile judges and courts) were established in 2004 pursuant to Act No. 28-2004/AN of 8 September 2004. Juvenile judges have jurisdiction over minor and ordinary offences committed by children under 18 years of age. Juvenile courts have jurisdiction to try serious offences committed by children under 18 years of age. Criminal penalties handed down against children take into account their age (the mitigating circumstance of minority). Minors under 13 years of age, as well as those between 13 and 18 who have acted without due discernment, bear no criminal responsibility and are subject only to educational and safety measures (Criminal Code, art. 74). Penalties are lessened for ordinary and serious offences committed by minors between 13 and 16 years of age (Act No. 19-61/AN of 9 May 1961 on juvenile offenders and children at risk, art. 20). Community service may not be imposed on any minor under 16 years of age (Act No. 7-2004 of 6 April 2004 on the establishment of community service, art. 6).

186. Precautions have been taken by lawmakers to protect minors involved in criminal proceedings. For example, announcements of court decisions concerning them must be made without specifying their identity. They may be referred to only by the initials of their family and given names (Act No. 19-61/AN of 9 May 1961, art. 23). Publishing records of the proceedings or pictures of the minors is prohibited.

187. Furthermore, in his policy statement of 30 March 2006, the Prime Minister announced several projects for young people (introduction of discount cards for social and recreational services, for example), which are now being implemented.

188. On the ground, much has been done to benefit children. The assessment of government actions for children in 2005 is encouraging. Those actions include the following:

- In connection with the promotion of integrated early childhood development, 11,634 children were enrolled in 80 affordable day-care centres; health and nutritional monitoring, facilitated by support in the form of food and basic medicines and by vaccination against diseases as part of the Expanded Programme on Immunization, was carried out.
- In addition, several actions were taken in connection with the promotion and protection of the rights of the child. With a view to the protection of children at risk, 3,724 children received supplies of food of various kinds; 763 specific cases of children at risk were registered and 909 child custody cases were resolved; 713 welfare investigations relating to custody, adoption and placement were conducted; 721 children were placed in institutions and/or in foster care and monitored; 23 children were adopted; and 950 counselling sessions on actions to determine paternity were held.

189. The school social service resolved 10,881 new hardship cases by ensuring that the children concerned were enrolled in an educational institution or by providing them with school supplies. The public social services also provided support to 13,529 schoolchildren in difficulty, in addition to sponsoring and monitoring 612 schoolchildren.

190. Moreover, talks, film screenings, radio broadcasts and counselling sessions were organized to promote and protect the rights of children and adolescents. As part of those efforts, 30 traditional leaders and 20 opinion leaders and facilitators were trained in children's rights, and 163 meetings of the children's parliament received support. Two hundred and twenty-five children in the eastern, central and south-central regions benefited from the issuance of declaratory judgements in lieu of birth certificates.

- Efforts were also made in connection with the supervision of children and young people in especially difficult circumstances. For example, 1,319 children and young people in especially difficult circumstances were identified and placed under supervision; 99 applications for admission to rehabilitation centres resulted in 60 placements, and responsibility was taken for 60 girls living on the streets; 115 children and young people in especially difficult circumstances were given help with income-generating activities, 94 were apprenticed to craftsmen and 108 were returned to their families.
- There were also achievements in connection with the fight against trafficking and the sexual exploitation and abuse of children. Educational talks, film screenings/debates, counselling sessions and patrols of recruiting sites took place; 263 child victims of trafficking were placed in apprenticeships, enrolled in school or put in a position to undertake income-generating activities, and 582 children from eight regions were intercepted and returned to their families.

20. Article 25: Participation in public affairs

191. Article 11 of the Constitution guarantees the enjoyment of civil and political rights subject to compliance with the relevant legal requirements. In addition, article 12 states that: "All citizens of Burkina Faso, without distinction of any kind, enjoy the right to participate in administering the affairs of the State and society. They are therefore entitled to vote and to be elected in accordance with the law."

192. The progress made in electoral matters is so great that participation increases with each new election period. Article 13 of the Constitution guarantees the right freely to form political parties and states that they contribute to the organization of political life, the education of the people and the realization of the right to vote.

21. Article 26: Right to non-discrimination

193. Article 1 of the Constitution enshrines the principle of non-discrimination as follows: "All citizens of Burkina Faso are born free and equal in rights. All are entitled to enjoy all the rights and freedoms guaranteed by this Constitution. Discrimination of any kind, in particular on the basis of race, ethnicity, regional provenance, colour, sex, language, religion, caste, political opinion, property or birth, is prohibited."

194. The violation of non-discrimination rules is punishable by law: "Any act of discrimination or manifestation contrary to freedom of conscience or freedom of religion that is likely to bring persons into conflict with each other shall be punishable by a prison sentence of between 1 and 5 years and a 5-year banning order. 'Act of discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (Criminal Code, art. 132).

195. The right to work, granted to all, is the same for all individuals (Constitution, art. 19). Discrimination in this regard, including racial, ethnic, social and political discrimination, is prohibited. This prohibition is reiterated in article 3 of the Labour Code. In accordance with article 175 of the Code, wages must be equal when professional qualifications, working conditions and performance are identical, regardless of race, sex, origin and age.

196. It is prohibited to form or to create tribal, regionalist, denominational or racist political parties (Constitution, art. 13, para. 5).



22. Article 27: Rights of minorities

197. There are no problems with regard to minorities in Burkina Faso. In any case, the Constitution guarantees equal rights for all.
